IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 101 of 1990
with
Civil Application No. 10159 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AADINATH IND.

Versus

SUPEDI GRAM PANCHAYAT

Appearance:
1. Second Appeal No. 101 of 1990
MR PV HATHI for Appellant
MR RV DAGLI FOR M/S. THAKKAR ASSOCIATES
for Respondent Nos. 1 and 2
MR KL PANDYA AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/12/2004

ORAL JUDGEMENT

1. By filing this appeal under Section 100 of the Code of Civil Procedure ('the Code' for short), appellant/original plaintiff seeks to challenge the judgment and decree dated 21.9.1989 passed in Regular Civil Appeal No.45 of 1983 by the learned Assistant Judge, Rajkot District at Gondal by which the appeal filed by the appellant came to be dismissed and thereby the judgment and decree dated 5.8.1982 rendered in Special Civil Suit No.56 of 1979 by the learned Civil Judge (S.D.)., Gondal dismissing the suit filed by the appellant, came to be affirmed.

2. The suit in question was filed by the appellant against the respondents challenging the resolutions passed by Supedi Gram Panchayat dated 12.3.1974 and 19.2.1979 and order of the District Development Officer dated 16.3.1979 which empowered Supedi Gram Panchayat to collect octroi from the appellant as according to the appellant, the said resolutions are illegal, void and without jurisdiction.

3. The suit was contested by the respondents by filing written statement.

4. The learned trial Judge, after framing issues, recorded oral evidence. The parties have produced documentary evidence also. On appreciation, evaluation and critical analysis of the evidence, the learned trial Judge decided the suit against the plaintiff by dismissing the same.

5. Aggrieved by the judgment and decree passed by the learned trial Judge, the appellant filed Regular Civil Appeal No.45 of 1983 before the learned Assistant Judge, Rajkot District at Gondal and the learned lower appellate Judge, on reappreciation, reevaluation and reanalysis of the evidence, came to the same conclusion as arrived at by the learned trial Judge and thereby dismissed the appeal filed by the appellant, which has given rise to the present Second Appeal.

6. The Second Appeal was admitted vide order dated 26.7.1990 on the following substantial question of law:

> "In the facts and circumstances of the case substantial question of law arises as to whether the definition of "Grain" defined in the Saurashtra Village Panchayat Ordinance, 1949 would be applicable in view of the saving clause in Sec.186 of the Bombay Village Panchayats Act, 1958 and Sec. 325 (2) of the Gujarat Panchayats

act, 1961, to the limits of Supedi Gram Panchayat?"

7. At the time of final hearing of this Second Appeal, the appellant/original plaintiff has filed Civil Application No. 10159 of 2004 in Second Appeal No.101 of 1990 praying to dispose of the Second Appeal as per the settlement arrived at between the parties, i.e., to disburse the amount in equal proportion of 50% between the contesting parties, i.e., the appellant and the Supedi Gram Panchayat, which amount has remained deposited in separate account in United Commercial Bank, Supedi Branch (together with interest that might have accrued upto now and hereafter) and further to issue necessary direction to the United Commercial Bank, Supedi Branch, in terms of the settlement, to permit withdrawal of the amount by the contesting parties. In support of the prayer, resolution dated 30.9.2004 passed by Supedi Gram Panchayat is produced at Annexure B to the application.

8. I have heard Mr. PV Hathi, learned advocate for the appellant and Mr. RV Dagli for M/s. Thakkar Associates for respondent Nos.1 and 2 - Supedi Gram Panchayat and District Development Officer and Mr. KL Pandya, learned AGP for respondent No.3 - State of Gujarat.

9. Mr. PV Hathi, learned advocate for the appellant and Mr. RV Dagli, learned advocate for respondent Nos.1 and 2, have jointly submitted that the contesting parties have amicably settled the matter in terms of compromise dated 30.9.2004 and therefore appropriate orders in the Second Appeal may be passed in terms of the settlement narrated in detail in the memo of Civil Application No.10159 of 2004.

10. It may be noted that this Court has while admitting the appeal on 26.7.1990 passed the following order on the same day on Civil Application No.1225 of 1990 in Second Appeal No.101 of 1990:

"Rule returnable on 16.8.90.

Ad interim relief staying operation and implementation of the judgment of the courts below on the condition that applicant-plaintiff shall go on depositing octroi henceforth with the opponent No.1 Panchayat and Panchayat shall keep all such collection in a separate account with the United Commercial Bank, Supedi Branch, upto 17.8.90."

11. Thereafter the said order was confirmed vide order dated 30.8.1990 by making rule absolute. Therefore, the amount deposited by the appellant/applicant remained deposited in a separate account with United Commercial Bank, Supedi Branch and a part of which was withdrawn by the Panchayat. An application for vacating the stay order was also made by Supedi Gram Panchayat on the ground of requirement of funds but the same was rejected by this Court vide order dated 13.11.1992. Therefore, according to the contesting parties, an amount of Rs.7,38,171 remained deposited with the United Commercial Bank, Supedi Branch which amount included the amount of interest earned on the said deposit.

12. It may be appreciated that the Second Appeal is pending on the issue as to whether the appellant was liable to pay octroi being outside the revenue limit of Supedi Gram Panchayat. It cannot be disputed that now there is no question of demand of octroi from 2001 since octroi recovery from the Panchayat has been abolished by the State Government. In aforesaid view of the matter, the parties have negotiated and looking to the financial condition of the Panchayat, the Panchayat has agreed by passing a resolution dated 30.9.2004 to accept 50% of the deposited amount stated above which settlement is accepted by the appellant firm being in the interest of the welfare of the Gram Panchayat.

13. It is also required to be noted that this settlement is arrived at in the interest of the contesting parties as the amount is lying deposited right from 1982 to 2001 when the octroi was abolished and as the litigation being based on legal issue and is likely to take further time and the parties have agreed to forgo part of their claims after taking into consideration the financial condition of Supedi Gram Panchayat.

14. In aforesaid view of the matter, the Second Appeal is required to be disposed of in terms of the settlement arrived at between the contesting parties and appropriate directions are to be issued to the United Commercial Bank, Supedi Branch to permit withdrawal of the amount which has remained deposited in a separate account as per the resolution i.e., 50% of the amount to be paid to the appellant firm and to permit the Supedi Gram Panchayat to withdraw the balance 50% amount from the said bank.

15. In view of the settlement arrived at by the

contesting parties, the substantial question of law formulated by this Court in the Second Appeal now need not be decided on merits.

16. For the foregoing reasons, the Second Appeal is disposed of in terms of the settlement which is a part of the record of the Civil Application No.10159 of 2004 at Annexure B - a resolution passed by Supedi Gram Panchayat. United Commercial Bank, Supedi Branch is directed to permit the appellant/applicant, M/s. Aadinath Industries, a Registered Partnership Firm, village Supedi, Taluka Dhoraji, District Rajkot, to withdraw 50% of the amount of Rs.7,38,171 with accrued interest, if any, and remaining 50% amount be permitted to be withdrawn by Supedi Gram Panchayat forthwith and report compliance to this Court. There shall be no order as to costs.

17. As the Second Appeal is disposed of, Civil Application No.10159 of 2004 filed in Second Appeal No.101 of 1990 also stands disposed of with no order as to costs.

(A.M. Kapadia, J.)

(karan)